



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Brent Newman, Interstate, Federal, & Water Information Section
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DATE: March 21, 2019

AGENDA ITEM: **28. Colorado River Drought Contingency Planning and Demand Management**

Background

Since January 2018, CWCB staff and members of the Attorney General's Office have been conducting a series of outreach presentations across Colorado regarding drought contingency planning efforts underway in the Colorado River Basin. Consistent with direction from the Board, these efforts have served dual purposes: to educate and inform interested water rights holders and other stakeholders about the status of ongoing efforts to develop drought contingency plans in the Upper and Lower Colorado River Basins, and to solicit feedback from Colorado water users regarding the concept of demand management as a potential tool for avoiding compact administration in the event of continued drought or worsening hydrology.

At the September 2018 Board meeting, staff provided an update on ongoing outreach efforts, the relationship between ongoing interstate efforts to implement DCPs in the Upper and Lower Basin, and the evaluation of demand management as a tool within Colorado. The Board heard comment from a variety of water managers, stakeholders, and members of the public regarding opinions, challenges and opportunities presented by potential implementation of demand management.

At the October 4, 2018 Special Meeting, the Board directed staff to continue this outreach, including providing information about the recently released Drought Contingency Plan (DCP) documents. The Board also directed staff to prepare a "draft policy statement" for Board review at the November meeting, to guide the assessment, feasibility analysis, and potential implementation of a demand management program within Colorado.

At the November 15, 2018 Board meeting, the Board unanimously approved "Support and Policy Statements Regarding Colorado River Drought Contingency Plans, Demand Management, and Compact Administration," which set out the Board's policy to:

"Develop the state's position and approach on whether and how to develop any Upper Basin Demand Management Program that could potentially be implemented within



Colorado consistent with state law to avoid or mitigate the risk of involuntary compact curtailment and to enhance certainty and security in the Colorado River water supply.”

This policy statement also laid out a strategy for formulating the state’s demand management position, identifying several elements for investigation and vetting through a thorough public review process. The statement also provides initial sideboards for such an investigation, informed by Board discussion and water user input to that point.

Since November, staff has been working with the Attorney General’s Office on a draft scope of work for demand management feasibility investigation. At the January Board meeting, staff presented a draft outline with initial thoughts for a 2019 Work Plan. As part of this agenda item, staff will report out on outreach efforts since January, provide an update on DCP progress, and walk the Board through the elements of the draft scope of work. The scope of work will identify a more formal outreach and public input procedure, working groups to investigate individual elements of demand management feasibility, and objectives to meet in calendar year 2019.

This work will focus on demand management considerations within Colorado, and will continue on a parallel track with interstate efforts led by the Upper Colorado River Commission. CWCB staff will also participate in those efforts, in close coordination with Colorado’s Commissioner and staff from neighboring Upper Basin states.

Staff recommendation

Staff recommends that the Board approve the 2019 Work Plan and direct staff to begin the action items identified immediately.



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2019 WORK PLAN FOR INTRASTATE DEMAND MANAGEMENT FEASIBILITY INVESTIGATIONS

I. INTRODUCTION

It has never been necessary to administer Colorado's Colorado River Basin for compact compliance. Hydrology in the 21st century, however, has revealed it prudent to prepare for contingencies that consider the prospect of protecting target elevations at Lake Powell as well as the increased risk of compact administration going forward. As part of this effort, the State of Colorado has demonstrated a coordinated approach among Colorado's Commissioner to the Upper Colorado River Commission, the Colorado Water Conservation Board, and the Attorney General's Office to support and endorse the documents and agreements that comprise the Colorado River Drought Contingency Plans for both the Upper and Lower Colorado River Basins. Such support and coordination have come about only after careful consideration, collaboration and consultation with water users and other interested stakeholders throughout the state.

Within the Drought Contingency Plan documents is the authorization to store, free of charge, in the Initial Units of the Colorado River Storage Project, water that is conserved under a demand management program if approved by the Upper Colorado River Commission and each of the Upper Division States (Colorado, New Mexico, Utah, and Wyoming). The term "demand management" loosely refers to the intentional conservation of water for the purpose of helping assure compliance with the Colorado River Compact, and in so doing, avoiding the need to implement mandatory water administration strategies to fulfill the Upper Basin's compact obligations. The storage authorization, as set forth in the Drought Contingency Plan documents, does not require or mandate development or implementation of any demand management program. It merely secures the opportunity for the Upper Division States to store any water conserved under such a program should the Upper Colorado River Commission and Upper Division States ever determine it is advisable and feasible to promote and protect their interests in the Colorado River water supply.

Prior to declaring its support for the package of Drought Contingency Plan documents, staff from the CWCB and Attorney General's Office conducted extensive outreach and consultation with water users and other interested stakeholders to build a knowledge base regarding the current conditions in the Colorado River Basin and the inner workings of the law of the Colorado River. Additionally, they sought input and feedback on issues and concerns related to the concept of demand management that are important and integral to any considerations going forward. The CWCB subsequently issued the "Support and Policy Statements Regarding

Colorado River Drought Contingency Plans, Demand Management, and Compact Administration” (Support and Policy Statement) that outlines, among other things, the minimum criteria through which the state will investigate the feasibility of any demand management activities in Colorado.

The following 2019 Work Plan is a follow up to the CWCB’s Support and Policy Statement. It outlines, in general terms, the next steps that the CWCB staff will take, in conjunction with the Defense of the Colorado River Subunit at the Attorney General’s Office (funded by the CWCB), and with the involvement of other relevant state agencies and interested stakeholders to identify and evaluate whether and how demand management measures may be taken to help assure continued compact compliance, and thereby promote greater certainty and security in the Colorado River water supply for constituents throughout the state.

II. PROPOSED TENTATIVE 2019 WORK PLAN

- a. **Purpose** - The purpose of this work plan is to set forth a process for helping develop Colorado’s position regarding whether and how any Colorado River Demand Management Program could or should operate within Colorado. Guided by the CWCB Support and Policy Statement, specific focus will be on measures that can be taken within Colorado in the 2019 calendar year to effectively and efficiently utilize staff, resources and meaningful water user and other stakeholder engagement to flesh out various elements of interest and concern related to demand management activities within Colorado. It is also intended to help inform any investigative processes facilitated by the Upper Colorado River Commission.
- b. **Tasks**
 - i. **Initial Issue Identification** – The concept of demand management may be simple to describe, but assessing its utility and how it could be implemented in a manner that respects considerations important to Colorado and remains consistent with state and federal laws is no small task. There are a number of issues that the Upper Colorado River Basin will need to assess as a whole in contemplating whether to develop a demand management program, and others that may be specific to Colorado. This task centers on identifying and prioritizing the primary legal, technical and policy issues related to demand management that Colorado may deem important to evaluate as part of any feasibility investigation. This effort may be informed by collaborating and coordinating with Colorado’s Commissioner and counterparts in other Upper Division States, consulting and discussing topics with water users and other interested stakeholders, and reaching out to

experts in specific fields who may have a familiarity and perspective on Colorado River matters that can add value and substance to the overall feasibility investigation.

- ii. **Establish Workgroups** – This task contemplates creating specific workgroups to effectively evaluate various issues related to the demand management feasibility investigation in Colorado. Each workgroup will be guided by the criteria set forth in the Support and Policy Statement in formulating a meaningful scope of work, budget and timeline for Fiscal Year 2019/2020. They will be facilitated by staff at the CWCB or Defense of the Colorado River Subunit at the Attorney General’s Office to coordinate the flow of information between workgroups and to the Project Management Team (PM Team) as appropriate. Participants from other state agencies, water user or stakeholder groups, and entities with relevant expertise may be invited to participate as needed to help develop and assess the feasibility investigations, keeping in mind the need to maintain an effective and efficient process. Probable workgroups at this time include:

**Law and Policy* – Review and analyze laws, rules and regulations and relevant policy considerations to inform the range of state and federal legal and policy frameworks to follow for demand management implementation within Colorado. This workgroup will also coordinate with the PM Team: (1) to help inform the legal and policy questions raised by other workgroups as they investigate specific elements of demand management feasibility within Colorado; and (2) to assist in developing reporting and educational materials.

**Monitoring and Verification* – Research, develop, and test (as needed) various methods available or needed to measure and verify the volume of conserved consumptive use under any demand management program. This workgroup will also work with the PM Team to further examine factors related to lead time, costs and staff resources required to model, pilot or otherwise meaningfully investigate various monitoring and verification considerations for implementing demand management within Colorado.

**Water Rights Administration and Accounting* – Research and test (as needed) various methods or practices available or required to (1) assist in administering water rights as a result of demand management activities within Colorado; and (2) account for volume

of conserved water as it is transported and stored at one of the Colorado River Storage Project's Initial Units. Tasks for this workgroup will include, but not be limited to, examination of unique administration practices and identifying actions that may incentivize or obstruct demand management participation in each water division. This workgroup will also work with the PM Team to further examine factors related to lead time, costs and staff resources required to model, pilot or otherwise meaningfully investigate water rights administration and accounting considerations for implementing demand management within Colorado

**Environmental Considerations* – Research, test (as needed), and identify potential environmental impacts that may need to be considered in any demand management program within Colorado. Tasks for this workgroup will include, but may not be limited to, consideration of existing environmental rules and regulations, and identification of short-term and long-term environmental considerations. This workgroup will also work with the PM Team to note potential environmental mechanisms and considerations that could incentivize or obstruct demand management participation in various parts of the state.

**Economic Considerations* – Research, test (as needed), and identify potential economic impacts that may need to be considered in any demand management program within Colorado. Tasks for this workgroup will include, but may not be limited to, consideration of both primary and secondary economic impacts and short-term and long-term economic considerations. This workgroup will also work with the PM Team to note potential mechanisms and considerations that could economically incentivize or obstruct demand management participation in various parts of the state.

**Funding* – Research, test (as needed), and identify potential funding sources for costs associated with implementation of a demand management program, including but not limited to, costs related to implementation and administration of such program within Colorado.

**Education/Outreach* – Develop public outreach strategies and materials regarding the topic of demand management within Colorado. In addition, this workgroup will coordinate with the PM Team to develop consistent and informative workshops and

presentations that are intended to engage with water rights holders and other interested stakeholders on the topic of demand management.

- iii. **Conduct Workshops** – In addition to utilizing workgroups, the work plan contemplates CWCB staff, with the assistance of the Defense of the Colorado River Subunit at the Attorney General's Office, regularly developing and conducting public workshops to maintain open lines of communication with the public at large, provide updates and information, and receive feedback and input regarding the status of demand management feasibility investigations involving the state. Such workshops would not take the place of additional outreach efforts deemed helpful to the collaborative process. Instead, they serve to set a meaningful benchmark for which anyone interested can learn and better understand the content and status of feasibility investigations.
- iv. **Evaluate and Report** – This task contemplates the PM Team preparing regular reports to the CWCB on the progress and results of investigations conducted in Calendar Year 2019. These reports may include, but are not to be limited to, noting key findings or gaps in information identified as a result of investigations, and identifying options and issues for the CWCB to consider in formulating the state's position on demand management feasibility. Also included would be a final status report on the work conducted pursuant to this work plan after Calendar Year 2019 has concluded.
- v. **Project Management** – This task contemplates establishing a PM Team comprised of representatives within the Department of Natural Resources and the Attorney General's Office to facilitate the work to be conducted consistent with this work plan. To this end, the PM team will coordinate the workgroups and facilitate the distribution of information between workgroups as needed, manage funding for the feasibility investigations, prepare status reports and recommendations for the CWCB, and coordinate with Colorado's Commissioner and counterparts at the UCRC regarding demand management considerations throughout the Upper Basin.

III. TENTATIVE TIMELINES – subject to change – TBD following clarification of status of DCP and Upper Basin Coordination.

April 2019: First Quarterly Workshop (TBD)

May 2019: UCRC Listening Workshop-4 States effort - TENTATIVE

June 2019: Workgroup SOWs completed and Update to UCRC

July 2019: Second Quarterly Workshop held (TBD); Update to CWCB Board

September 2019: Third Quarterly Workshop held (TBD)

November 2019: Fourth Quarterly Workshop held (TBD); Update to CWCB Board and UCRC

December 2019: Workgroup Investigation Progress reports or deliverables submitted to PM Team

January/March 2020: Draft/Final Progress Reports of Workgroup Investigations submitted to CWCB Board of Directors

IV. DELIVERABLES – TBD following clarification of status of DCP and Upper Basin Coordination.

Each Workgroup is tasked with submitting to the PM Team:

(1) Quarterly budget/expense reports (July; September; November)

(2) Draft Status/Progress Report of Findings and Conclusions to the PM Team no later than December 15, 2019.

V. ESTIMATED RESOURCES / COSTS for 2019 - TBD following clarification of status of DCP, Upper Basin Coordination, CWCB funding opportunities.